

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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JAMES MURRAY,

Plaintiff,

vs

9:03-CV-1010  
(DNH/GLS)

R. PALMER, Corrections Officer, Great Meadow  
Correctional Facility; S. GRIFFIN, Corrections Officer,  
Great Meadow Correctional Facility; M. TERRY,  
Corrections Officer, Great Meadow Correctional Facility;  
F. ENGLESE, Corrections Officer, Great Meadow  
Correctional Facility; SERGEANT EDWARDS, Great  
Meadow Correctional Facility; K. BUMP, Sergeant, Great  
Meadow Correctional Facility; K.H. SMITH, Sergeant,  
Great Meadow Correctional Facility; A. PAOLANO,  
Facility Health Director: and TED NESMITH,  
Physicians Assistant.

Defendants.

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APPEARANCES:

OF COUNSEL:

JAMES MURRAY, 95-A-4417
Plaintiff *Pro Se*
Upstate Correctional Facility
P.O. Box 2001
309 Bare Hill Road
Malone, New York 12953

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants
Department of Law
The Capitol
Albany, New York 12224

JAMES SEAMAN, ESQ.
Asst. Attorney General

DAVID N. HURD
United States District Judge

ORDER

Plaintiff, James Murray, brought this civil rights action pursuant to 42 U.S.C. § 1983. In a 51 page Report Recommendation dated February 11, 2008, the Honorable George H. Lowe, United States Magistrate Judge, recommended that defendants' motion for summary judgment be granted in part (i.e., to the extent that it requests the dismissal with prejudice of plaintiff's claims against defendant Paolano and Nesmith); and denied in part (i.e., to the extent that it requests dismissal of plaintiff's claims against the remaining defendants on the grounds of plaintiff's failure to exhaust available administrative remedies) for the reasons stated in the Report Recommendation. Lengthy objections to the Report Recommendation have been filed by the plaintiff.

Based upon a de novo review of the portions of the Report-Recommendation to which the plaintiff has objected, the Report-Recommendation is accepted and adopted. See 28 U.S.C. 636(b)(1).

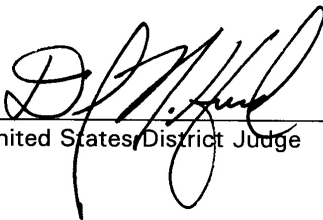
Accordingly, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;
2. Plaintiff's complaint against defendants Paolano and Nesmith is DISMISSED with prejudice;

3. Defendants' motion for summary judgment is DENIED, to the extent that their request for dismissal of plaintiff's assault claims under the Eighth Amendment against the remaining defendants on the grounds of plaintiff's failure to exhaust available administrative remedies as stated in the Report-Recommendation.

IT IS SO ORDERED.


United States District Judge

Dated: June 20, 2008
Utica, New York.